IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

A.O.No.207 of 2006
with
C.A.No 286 of 2006

Javed Abdul Rahman Patel .. appellant
vs
Smt Mariambibi Ismail Patel and anr.. respondents

Mr V.Z Kankaria for appellant
Ms Seema Sarnaik for respondent no.l
Mr.G.S.Hegde for respondent no. 2

CORAM; A.M.KHANWILKAR J.

DATED l3.4.2006

P.C.

l. Heard parties. Admit. Ms Seema Sarnaik waives service for respondent no.l and Mr. Hegde waives service for respondent no. 2. As short question is involved the appeal is taken up forthwith for final disposal by consent.

2. This appeal takes exception to the judgment and order passed by the Civil Judge S. D. Panvel dated l7.2.2006 below Exh 5 in Special Civil Suit No. l6l of 2005. By this order the trial court has rejected the application for interim relief preferred by the appellant-plaintiff during the pendency of the suit. The sole basis on which the

court proceeded to answer the relevant issue against the appellant is that the purported agreement between the appellant and the defendant.no.l is of no legal consequence as the property in question was not in existence and as no lease agreement was executed in favour of the respondent no.l by defendant no. 2 Corporation. There is substance in the argument canvassed on behalf of the appellant that the trial court has clearly misdirected itself in taking that view. It is well settled principle of law that even if there is contingent contract between the parties, it is open to a party to the contract to approach the court for appropriate reliefs as has happened in this case.

3. The learned counsel for the respondent no.l submits that in fact the respondent no.l was disputing the existence of any agreement between the appellant- plaintiff and respondent no.l-defendant no.l in respect of the suit property. However, the court below has not answered the issue against the appellant on that count. Suffice it to observe that during the course of argument the learned counsel for the respondent no.l, on instructions states that the respondent no.l shall not create any third party right, title and

interest in respect of the suit property till the disposal of the suit. Accepting the said assurance given across the Bar, no further orders will be necessary, as such assurance will act as injunction against the respondent no.l from creating any third party interest on the property in any manner whatsoever.

4. In this view of the matter, the appeal is disposed of on accepting the assurance of the respondent in the above terms with further direction to the trial court to decide the suit expeditiously and preferably by the end of March 2007. This direction is given on the basis of assurance given by the parties through their counsel before this court that necessary cooperation will be extended before the trial court for early disposal of the suit. All questions on merits in the suit will have to be decided on its own merits in accordance with law, uninfluenced by any observations made in the impugned order or for that matter in this order.